International Shipcare Sdn Bhd v The owner of and other persons interested in the ships or vessels MV 'EL HADJAR' registered at the port of Annaba, Algeria; MV 'AIN TEMOUCHENT', MV 'NEMEMCHA' and MV 'NEDROMA' which are all registered at the port of Algiers, Algeria

HIGH COURT (LABUAN) — CIVIL SUIT NO LBN-27NCC-1/11 OF 2013
RAVINTHRAN J
2 JUNE 2014

Civil Procedure — Admiralty — Admiralty jurisdiction of the High Court — Whether plaintiff's action fell within admiralty jurisdiction — Whether causes of action pleaded by plaintiff were only for wrongful occupation and trespass of vessels at plaintiff's lay-up site — Whether causes of action pleaded did not bring matter within admiralty jurisdiction of court — Whether plaintiff could not improve deficiencies in statement of claim by using affidavit evidence — Whether plaintiff's statement of reply could not plead new cause of action or raise new ground/claim inconsistent with statement of claim — Whether applicant applying to strike out action under O 18 r 19(1) of the Rules of Court 2012 could rely on any one or all of limbs thereunder — Whether failure to specify which particular limb relied upon or lumping all limbs together with use of 'and/or' not fatal to application — Rules of Court 2012 O 1A & O 18 r 10

The plaintiff provided ship and rig lay-up services and had a lay-up site ('the site') in Labuan. The plaintiff claimed that at all material times four vessels owned by the defendant, International Bulk Carrier SPA ('IBC'), were laid up at the site and were not removed despite the plaintiff notifying IBC that it would charge USD18,000 per month for the vessels occupying and utilising the site. In its instant action, the plaintiff pleaded that IBC's vessels continued to remain in wrongful occupation of/in trespass of the site resulting in further lay-up charges, costs and other expenses being incurred. The plaintiff claimed USD132,953.55, an order to compel IBC to remove the vessels, and, if the judgment sum was not paid, an order to sell the vessels to recover the same. The defendant applied to strike out the action under O 18 r 19(1)(a), (b) and/or (d) and O 20 r 8 of the Rules of Court 2012 and the inherent jurisdiction of the court. Two preliminary objections were raised by the plaintiff to the application — (a) that the cause of action disclosed in the writ did not fall within the admiralty jurisdiction of the court and (b) that the application was defective for lumping together by the use of 'and/or' the various grounds for striking out under O 18 r 19(1) without specifying which provision in particular was being relied upon. Under s 24(b) of the Courts of Judicature Act 1964, the civil

jurisdiction of the High Court included the same jurisdiction and authority in relation to admiralty matters as was had by the High Court in England under the United Kingdom Supreme Court Act 1981 which was replaced by the Senior Courts Act 1981 ('the SCA'). Section 20(2) of the SCA provided a list of claims that fell under the admiralty jurisdiction of the High Court which, in the context of the instant case, included any claim in respect of goods or materials supplied to a ship for her operation or maintenance (s 20(2)(m)) and any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues (s 20(2)(n)). In its affidavit in opposition, the plaintiff submitted that its claim fell under the said s 20(2)(m) of the SCA for supply of goods and materials to the vessels.

Held, striking out the action:

(1) The only cause of action disclosed in this case was 'wrongful occupation' and 'trespass' of the lay-up site by the four vessels as a result of the defendant's refusal to remove them. The plaintiff did not plead the supply of goods or services to the four vessels. What the plaintiff attempted to do in the affidavit in opposition was to improve upon the statement of claim to bring its claim within the admiralty jurisdiction. It was trite law that an affidavit could not improve deficiencies in the pleadings; only an amendment to the pleadings could rectify it. The supply of goods and services alluded to in the affidavit in opposition could not be taken into account in considering whether the plaintiff's claim fell within the admiralty jurisdiction of the High Court (see paras 9, 10, 12 & 15).

(2) In the statement of reply, the plaintiff pleaded that the defendant had made additional 15 payments towards lay-up services after the agreement between the parties had been terminated. It was trite law that in a statement of reply the plaintiff could not plead a new cause of action or raise any new ground or claim inconsistent with the statement of claim. This view was consistent with O 18 r 10 of the Rules of Court 2012 (see paras 10–11).

(3) The plaintiff's argument that 'dock charges or dues' were incurred by the defendant (as prescribed under s 20(2)(n) of the SCA) was untenable from the pleadings and the affidavit evidence. It was not disputed that the four vessels were laid up in anchorage in open waters and were nowhere near any dock, wharf or harbour or any enclosed area. In any case, the plaintiff never pleaded a claim for 'dock charges or dues' in the statement of claim (see paras 12–14).

(4) As the plaintiff failed to satisfy the court on the face of the pleadings that its claim fell within the admiralty jurisdiction of the court, the action had to be struck out on that ground alone (see para 15).

(5) The preliminary objection raised with regard to O 18 r 19(1) was no longer valid since the insertion of O 1A in the Rules of Court. Although it was true that the limbs of O 18 r 19(1) were disjunctive, an applicant could rely on either one or all of them. Merely because 'and/or' was used to connect the limbs was no reason to dismiss the application (see para 5).

[Bahasa Malaysia summary

Plaintif menyediakan perkhidmatan kapal dan *lay-up* pelantar dan mempunyai tapak *lay-up* ('tapak') di Labuan. Plaintif mendakwa bahawa pada setiap masa empat kapal yang dimiliki oleh defendan, International Bulk Carrier SPA ('IBC'), telah tidak digunakan ditapak dan tidak dikeluarkan walaupun plaintif memaklumkan IBC bahawa ia akan mengenakan bayaran USD18,000 sebulan bagi kapal-kapal yang menduduki dan menggunakan tapak ini. Dalam tindakan ini, plaintif mengaku bahawa kapal IBC terus kekal dalam pendudukan salah di dalam pencerobohan tapak mengakibatkan caj *lay-up* lanjut, kos dan perbelanjaan lain menjadi tertanggung. Plaintif menuntut USD132,953.55, suatu perintah untuk memaksa IBC untuk mengeluarkan kapal, dan, jika jumlah penghakiman itu tidak dibayar, suatu perintah untuk menjual kapal pulih yang sama. Defendan memohon untuk membatalkan tindakan di bawah A 18 k 19(1)(a), (b) dan / atau (d) dan A 20 k 8 Kaedah-Kaedah Mahkamah 2012 dan bidang kuasa yang ada pada mahkamah. Dua bantahan awal yang dibangkitkan oleh plaintif melalui permohonan itu — (a) bahawa kausa tindakan yang dinyatakan dalam writ itu tidak termasuk dalam bidang kuasa admiralti daripada mahkamah dan (b) bahawa permohonan itu adalah cacat kerana pergabungan bersama-sama dengan menggunakan 'dan/atau' pelbagai alasan bagi pembatalan di bawah A 18 k 19(1) tanpa menjelaskan peruntukan mana khususnya telah digunakan. Di bawah s 24(b) Akta Mahkamah Kehakiman 1964, bidang kuasa sivil Mahkamah Tinggi termasuk bidang kuasa yang sama dan pihak berkuasa berhubung dengan perkara-perkara admiralti seperti yang dimiliki oleh Mahkamah Tinggi di England di bawah United Kingdom Supreme Court Act 1981 yang telah digantikan kepada Senior Courts Act 1981 ('SCA'). Seksyen 20(2) SCA menyediakan senarai tuntutan yang jatuh di bawah bidang kuasa admiralti Mahkamah Tinggi yang, dalam konteks kes ini, termasuk apa-apa tuntutan berkenaan dengan barang-barang atau bahan yang dibekalkan kepada kapal untuk menjalani pembedahan atau penyelenggaraan (s 20(2)(m)) dan apa-apa tuntutan berkenaan dengan pembinaan, pembaikan atau peralatan kapal atau berkenaan dengan caj atau yuran dok (s 20(2)(n)). Dalam afidavit menentang, plaintif berhujah bahawa tuntutannya terangkum di bawah s 20(2)(m) SCA untuk bekalan barang-barang dan bahan-bahan kepada kapal.

Diputuskan, membatalkan tindakan:

(1) Satu-satunya sebab tindakan yang dinyatakan di dalam kes ini adalah

'wrongful occupation' dan 'trespass' tapak *lay-up* oleh keempat-empat kapal tersebut akibat keengganan defendan untuk mengeluarkannya. Plaintif tidak mempli pembekalan barang atau perkhidmatan untuk empat kapal tersebut. Apa plaintif telah cuba melakukan dalam afidavit menentang adalah untuk memperbaiki pernyataan tuntutan untuk membawa tuntutan dalam bidang kuasa admiralti. Ia adalah undang-undang biasa bahawa afidavit tidak dapat memperbaiki kekurangan dalam pliding; hanya pindaan kepada pliding boleh membetulkan ia. Pembekalan barang dan perkhidmatan dimaksudkan dalam afidavit menentang tidak boleh diambil kira dalam mempertimbangkan sama ada tuntutan plaintif termasuk dalam bidang kuasa admiralti Mahkamah Tinggi (lihat perenggan 9, 10, 12 & 15).

(2) Dalam pernyataan jawapan, plaintif mengaku bahawa defendan telah membuat 15 bayaran tambahan terhadap perkhidmatan *lay-up* selepas perjanjian antara pihak-pihak yang telah ditamatkan. Ia adalah undang-undang biasa bahawa dalam satu kenyataan jawapan plaintif tidak boleh memplidkan kausa tindakan baru atau membangkitkan apa-apa alasan baru atau tuntutan selaras dengan pernyataan tuntutan. Pandangan ini adalah selaras dengan A 18 k 10 Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 10–11).

(3) Hujahan plaintif bahawa 'dock charges or dues' telah ditanggung oleh defendan (yang ditetapkan di bawah s 20(2)(n) SCA) adalah tidak dapat dipertahankan dari pliding dan keterangan afidavit. Ia tidak dipertikaikan bahawa keempat-empat kapal tersebut telah diletakkan di tempat berlabuh di perairan terbuka dan yang tidak berdekatan dengan mana-mana limbungan, dermaga atau pelabuhan atau mana-mana kawasan tertutup. Dalam mana-mana kes, plaintif tidak pernah memplid tuntutan untuk 'dock charges or dues' dalam pernyataan tuntutan (lihat perenggan 12 & 14).

(4) Memandangkan plaintif gagal memuaskan mahkamah pada zahir plidingnya bahawa tuntutannya termasuk dalam bidang kuasa admiralti mahkamah, tindakan itu terpaksa dibatalkan atas alasan itu sahaja (lihat perenggan 15).

(5) Bantahan awal yang dibangkitkan dengan mengambil kira A 18 k 19(1) tidak lagi sah sejak kemasukan A 1A dalam Kaedah-Kaedah Mahkamah. Walaupun ia adalah benar bahawa bahagian A 18 k 19(1) adalah terpisah, pemohon boleh bergantung kepada salah satu atau semua peruntukan. Semata-mata kerana 'dan/atau' digunakan untuk menyambungkan bahagian adalah bukan sebab untuk menolak permohonan itu (lihat perenggan 5).]

Notes

For cases on admiralty jurisdiction of the High Court, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 318–320.

Cases referred to

Firmcity Sdn Bhd v Agensi Pekerjaan SMC Sdn Bhd & Ors [2010] MLJU 1099, HC (folld)

Herbert and another v Vaughan and others [1972] 3 All ER 122, Ch D (refd)

Nirumalan K Pillay & Ors v A Balakrishnan & Ors [1997] 1 SLR 322, HC (refd)

Pemilik dan Sesiapa Berkenaan Dengan Kapal atau Vesel 'Siti Ayu' dan 'Melati Jaya' v Sarawak Oil Palm Sdn Bhd & Anor [2005] MLJU 428; [2006] 1 CLJ 126, CA (refd)

Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram [2001] MLJU 390; [2001] 3 CLJ 743, HC (refd)

United Malayan Banking Corporation Berhad v Palm & Vegetable Oils (M) Sdn Bhd & Ors [1983] 1 MLJ 206, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 24(b)
Rules of Court 2012 O 12 r 10, O 18 r 19(b), (c), (d), O 20 r 8
Senior Courts Act 1981 [UK] s 20(2), 20(2)(m)(n)

Thomas Ting (Ng & Ting) for the plaintiff.
Arunachalam Kasi (Esther Ong Tengku Saiful & Sree) for the defendant.

Ravinthran J:

INTRODUCTION

[1] This is an application by the defendant to strike out the admiralty action of the plaintiff under O 18 r 19, O 20 r 8 of the Rules of Court 2012 ('ROC 2012') and under the inherent jurisdiction of the court. Originally, the defendant had applied to set aside the writ as well under O 12 r 10 of the ROC 2012 on the ground that the court has no jurisdiction to hear the claim. Counsel for the plaintiff raised a preliminary objection on the ground that the application under O 18 r 19 is inconsistent with the application under O 12 r 10. The defendant then made an election to proceed under O 18 r 19 only.

BACKGROUND FACTS

[2] The plaintiff is a provider of ship and rig lay-up services. The plaintiff has a lay-up site in Labuan. At all materials times the four vessels, namely MV El Hadjar, MV Ain Temouchent, MV Nememcha and MV Nedroma are laid up at the lay-up site of the plaintiff. The plaintiff has averred that International

Bulk Carrier SPA ('IBC') is the owner of these vessels. In LBN 27–2/4 of 2013, plaintiff commenced admiralty action against IBC for failing to pay for services rendered under eight agreements. Judgment was entered against IBC and the judgment sum was eventually paid. However, IBC did not remove the four vessels from the lay-up site of the plaintiff. The plaintiff gave notice that USD18,000 per month would be charged for occupying and utilising the lay-up site. The monthly rate in the previously terminated agreements was RM15,000 per month. However, the IBC failed to remove the said vessels. The cause of action of plaintiff is pleaded in paras 9 and 10 which is as follows:

> 9 Despite the termination of the CNAN Contracts, the 1st and 2nd Notices and the Defendant's promise to remove their said 4 Vessels from the said Lay-up Site, the Defendant has failed to remove and/or cause to remove the said 4 Vessels from the said Lay-up Site to-date and the said 4 Vessels have continued to remain in wrongful occupation of the said Lay-up Site and to trespass thereon. The continued occupation by the said 4 Vessels at the Lay-up Site has also resulted in further accrual of lay-up charges, costs and other expenses being incurred for the said 4 Vessels at the said Lay-Up Site.
>
> 10 By reason aforesaid, the Plaintiff has suffered loss and damage amounting to USD132,953.55 as at 31.10.2013 being the sum of the said Monthly Rate accrued together with other costs and expenses incurred.

[3] The plaintiff is now praying for the said sum of USD132,953.55 and an order to compel the defendant to remove the vessels. In the event that the judgment sum is not paid, the plaintiff is also praying for an order to sell the vessels to recover the same.

PRELIMINARY OBJECTION

[4] Counsel for the plaintiff raised two preliminary objections to the striking out application of the defendant. The first preliminary objection that the defendant cannot proceed under both O 18 r 19 and O 12 r 10 is academic now because of the election of the defendant to proceed under O 18 r 19 only. The second objection is highly technical in nature. The defendant's application, in part, reads as follows:

> Let all parties concerned attend ... the hearing of an application on the part of the Defendant under O 18 r 19 (1) (a), (b) and/or (d) of the Rules of Court ...

[5] Counsel for the plaintiff submitted on the authority of *Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram* [2001] MLJU 390; [2001] 3 CLJ 743 that the defendant added cumulatively grounds (b), (c) and (d) of O 18 r 19 of the ROC 2012 together and lumped them together as one. In my view since the insertion of O 1A of the ROC 2012, this type of objection is not valid any more. It is true that the limbs of O 18 r 19 are disjunctive but; an applicant may rely on either one or all of them. However,

merely because 'and/or' is used, there is no reason to dismiss the application. I completely agree with what was stated in *Firmcity Sdn Bhd v Agensi Pekerjaan SMC Sdn Bhd & Ors* [2010] MLJU 1099 by Lee Swee Seng JC:

> The plaintiff's counsel had also objected to the third and fourth defendants application in that the specific limbs of O 18 r 19(1) of (a) and/or (b) and/or (c) and/or (d) are not specifically referred to and hence is flawed by the authority of *Thiruchelvasegaram Manickavasegar v Mahadevi Nadchatiram* [2001] 3 CLJ 743and that of *Razsah Enterprise Sdn Bhd v Arab Malaysian Finance Bhd* [2009] 2 MLJ 102. However Abdul Malik Ishak J (as he then was) in *Siang Yam Beng v Marushin Canneries (M) Sdn Bhd & Anor* [1995] 4 MLJ 691 had observed that all the four grounds under O 18 r 19 (1)(a) to (d) may overlap and at times merge with one another thereby giving it a shot in the arm so to speak, for the applicants. I take the view that there is no need to be unduly technical where a striking out under O 18 r 19 (1) is concerned. It may well be said that there are very few and far in between cases where if one succeeds under limb (a), one may not succeed under limb (b) or (c) or (d) or vice versa. I say that like some things in life they come in a package; a cluster of fruits rather than a singular fruit. When lawyers employ the nomenclature of 'no reasonable cause of action', or 'scandalous, frivolous and vexatious' and 'otherwise an abuse of the process of the Court', it is like a mantra recited in one breath. No one is prejudiced by it even if the actual limb or rule or Order is not stated or not stated with precision. It may be poor drafting such that even if the applicant succeeds, it may result in less cost awarded to the successful applicant for its inelegant drafting but nothing more turns on that. I am constrained towards this course because effect must of necessity be given to O 1A RHC which reads:
>
> In administering any of the rules herein the court or a judge shall have regard to the justice of the particular case and not only to the technical non-compliance of any of the rules herein.

I shall therefore dismiss the second preliminary objection of the plaintiff.

STRIKING OUT APPLICATION

[6] The principal argument of the defendant is the cause of action disclosed in the writ does not fall within the admiralty jurisdiction of this court. I find that there is merit in this argument for the following reasons. Section 24(b) of the Courts of Judicature Act 1964 enacts as follows:

> 24 Civil jurisdiction — specific
>
> Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include:
>
> (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981;

[7] Section 20 (2) of the Senior Courts Act 1981 of the United Kingdom (formerly known as the Supreme Court Act 1981) provides a list of claims that

falls under the admiralty jurisdiction. It is an exhaustive list. The limbs that are relevant to this action are as follows:

> 20 Admiralty jurisdiction of High Court.
>
> 20(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say:
>
> (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
>
> 20(2) The questions and claims referred to in subsection (1)(a) are:
>
> (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
>
> (n) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

[8] The plaintiff pleaded wrongful occupation of their lay-up site and trespass as a cause of action against the defendant in paras 9 and 10 of the statement of claim that I reproduced earlier. The reason for this claim is the 'refusal' of the defendant to remove the four vessels from their lay-up site. Counsel for the defendant submitted that the alleged 'refusal to remove' is not a cause of action that falls under the admiralty jurisdiction and hence there is no reasonable cause sufficient to sustain an in rem action. During argument, counsel for the plaintiff submitted that the claim of the plaintiff falls under s 20(2)(m) which is in respect of 'goods or materials (eg portable diesel generator, lube oil, water, fuel oil, battery water, hydraulic oil)'. In the affidavit in opposition of the plaintiff dated 14 March 2014, plaintiff referred to the earlier lay-up services agreement between the parties and deposed that even after the termination of the said agreements, the plaintiff had provided services to the four vessels. In para 13, the representative of the plaintiff deposed as follows:

> ... Thus, in order to mitigate the Plaintiff's losses, it is inevitable for the Plaintiff to continue to provide the necessary to upkeep, maintain and preserve the value of the said 4 Vessels at the said Lay-up Site.

[9] However, as noted by counsel for the defendant, the plaintiff did not plead the supply of goods or services to the four vessels in the statement of claim. They founded their claim in 'wrongful occupation' and 'trespass' of the lay-up site. To my mind what the plaintiff had attempted to do in the affidavit in opposition is to improve the statement of claim to bring their claim with the admiralty jurisdiction. It is trite law that an affidavit cannot improve deficiencies in pleadings. Only an amendment can rectify it. In *United Malayan Banking Corporation Berhad v Palm & Vegetable Oils (M) Sdn Bhd & Ors* [1983] 1 MLJ 206 Raja Azlan Shah Ag LP (as HRH then was), said as follows:

> ... we cannot but observe that any defect or omission in the statement of claim cannot be made good by affidavit evidence.

[10] Therefore the supply for goods or services alluded to in the affidavit in opposition cannot be taken into account in considering whether the claim of the plaintiff falls within the admiralty jurisdiction of the High Court. I am mindful that the in the statement of reply, the plaintiff pleaded that the defendant made additional 15 payments towards lay-up services after the termination of the agreement between the parties. However, it is trite law that in the statement of reply, a plaintiff cannot plead a new cause of action or raise any new ground or a claim inconsistent with the statement of claim. I find that the following passage from the judgment of the Singapore High Court in *Nirumalan K Pillay & Ors v A Balakrishnan & Ors* [1997] 1 SLR 322 correctly expounds the function of a statement of reply:

> .... the function of a reply is to answer matters raised in the defence, its contents must relate to matters raised in the defence. What is the same thing, the plaintiffs may not supplement his statement of claim by including in his reply matters which ought to have been included in the statement of claim. In this respect, a reply is analogous to re-examination of a witness which should be confined to matters touched on in cross-examination. Fresh evidence adding to or re-affirming evidence-in-chief is not permitted in re-examination.

[11] In the earlier English case of *Herbert and another v Vaughan and others* [1972] 3 All ER 122 Goff J said that although the statement of claim should not anticipate the defence, if the defence gives reasons for setting up a new cause of action the proper course is to amend the statement of claim and not to deliver a reply. In fact, the above views are consistent with O 18 r 8 of the Rules of Court 2012 which reads as follows:

> 10 Departure (O 18 r 10)
>
> (1) A party shall not in any pleading make an allegation of fact or raise any new ground or claim inconsistent with a previous pleading of his.
>
> (2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[12] Therefore, the only cause of action disclosed in this case is 'wrongful occupation' and 'trespass' of the lay-up site by the four vessels.

[13] The second issue raised by counsel for the plaintiff to support the case of the plaintiff that their claim falls within the admiralty jurisdiction is that 'dock charges or dues' as prescribed under s 20(2)(n) were incurred by the defendant. In my opinion, this argument is plainly untenable from the pleadings and the affidavit evidence. The plaintiff has not disputed that the four vessels are laid up in anchorage in open waters. They are nowhere near any dock, wharf or harbour as submitted by counsel for the defendant and this submission was not contradicted by the plaintiff. Further the photographs tendered by the defendant of the four vessels show that the four vessels are in

open waters. Again these photographs were not disputed by counsel for the plaintiff. However, counsel for the plaintiff submitted that the meaning of dock includes the 'lay-up' site.

[14] However, counsel for the plaintiff did not cite any authority to support his argument. The general meaning of 'dock' in well known dictionaries (*Oxford, Cambridge* and *Collins*) cited by counsel for the defendant is to the effect that a dock is an enclosed area of water in a port for the loading, unloading, and repair of ships. In this case, the vessels are in open waters and not in an enclosed area. Even if it were otherwise, it must be noted that the plaintiff never pleaded a claim for 'dock charges or dues' in the statement of claim.

[15] Finally, counsel for the plaintiff submitted on the authority of *Pemilik dan Sesiapa Berkenaan Dengan Kapal atau Vesel 'Siti Ayu' dan 'Melati Jaya' v Sarawak Oil Palm Sdn Bhd & Anor* [2005] MLJU 428; [2006] 1 CLJ 126 that this court can dispose off a claim that does not fall under the admiralty jurisdiction when hearing an admiralty action. However, the facts of that case are significantly different. In that case the plaintiffs had commenced an admiralty action in rem against the defendants for failing to furnish seaworthy tugboats. The claim of the plaintiff fell within the admiralty jurisdiction of the court. However, the defendant counterclaimed against the plaintiffs for the wrongful arrest and detention of the defendants' two tugboats. The High Court dismissed the plaintiffs' claim and also held that the counterclaim did not fall within the admiralty jurisdiction. On appeal, the Court of Appeal held that although the two actions belonged to two different jurisdictions, the learned judge should have combined these two jurisdictions for the sake of convenience and disposed of the counterclaim as a non-admiralty proceeding in an action that originated from an admiralty proceeding. In the instant case, there is no question of a counterclaim. Since the plaintiff has filed an admiralty action, they must satisfy the court on the face of the pleadings that their claim falls squarely within the admiralty jurisdiction of the court. For reasons given above, I am satisfied that they failed to do so and the action should be struck out on this ground alone. In the premises, I shall grant order in terms of prayer (1) of encl 7. The plaintiff is ordered to pay costs of RM10,000 to the defendant.

Action struck out.

Reported by Ashok Kumar